

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

LISA JOHNSTON,

Petitioner,

vs.

Case No. 0516CV09517

**MISSOURI DEPARTMENT OF
SOCIAL SERVICES, CHILDREN'S
DIVISION and
FRED SIMMENS, as Director,
Children's Division**

Respondents.

JUDGMENT

This case is pending before the court on Petitioner's Motion for Summary Judgment filed herein on July 21, 2005, and Respondents' Motion for Summary Judgment filed on August 22, 2005. Both sides have responded in writing to the opposing summary judgment motion, and oral arguments were made by counsel for Petitioner and Respondents on November 3, 2005. The Court, having considered the written motions, suggestions, the administrative record (hereinafter "AR"), briefs and oral arguments of the parties, now makes the following findings, orders and judgment herein.

Nature of this Action

Petitioner Lisa Johnston petitions this court for judicial review of the final agency decision and order of the Respondent Missouri Department of Social Services, Children's Division, and Respondent Fred Simmens in his official capacity as Director of the Missouri Department of Social Services, Children's Division (hereinafter referred to as "DSS"), denying her application for a Missouri foster care license. She brings this action under the Missouri Administrative Procedure Act (MAPA), RSMo §§ 536.010 *et seq.*

DSS denied Petitioner Lisa Johnston's application for a foster care license upon its conclusion that she "was not a person of reputable character" under 13 CSR 40-60.030(2). The Respondent concedes that "but for her sexual orientation, Applicant and her partner have exceptional qualifications to be foster parents." AR at 125. Petitioner was denied a foster care license because of her sexual orientation.

Procedural History:

Petitioner Lisa Johnston completed and submitted an application for foster care license on August 20, 2003. A home study and interview was conducted by a DSS caseworker, who determined that Petitioner's home met licensing standards. AR at 3. Petitioner and her roommate were then referred into the foster parent training process; they were well into the process of successfully completing the training when Petitioner was notified that the agency was denying her application.

By letter dated October 16, 2003, Petitioner was informed that DSS was denying her application for a Missouri foster care license. AR at 83. On October 23, 2003, Ms. Johnston timely noticed an administrative appeal. AR at 72, 124. An administrative hearing was held by the agency, before its administrative hearing officer, on January 27, 2004. AR at 6, 121. On March 11, 2005, DSS and Respondent Fred Simmens issued a final decision and order affirming the agency's denial of Ms. Johnston's application for a foster parent license. AR at 121-128.

This action seeking judicial review was timely filed on April 8, 2005, under RSMo § 536.110.1. Both sides have filed and fully briefed Motions for Summary Judgment, seeking judicial relief on the pleadings and administrative record available for the court's review. Jurisdiction and venue are not disputed.

Scope of Review:

This court's scope of review of the agency action is established by RSMo § 536.140.2. The court reviews the agency decision to determine whether the agency action (1) is in violation of constitutional provisions; (2) is in excess of the statutory authority or jurisdiction of the agency; (3) is unsupported by competent and substantial evidence upon the whole record; (4) is, for any other reason, unauthorized by law; (5) is made upon unlawful procedure or without a fair trial; (6) is arbitrary, capricious or unreasonable; or (7) invokes an abuse of discretion. The agency's decision will be upheld unless it falls into one of these categories. Here, the Petitioner argues that the agency's action is unsupported by competent and substantial evidence upon the whole record, and is arbitrary, capricious or unreasonable.

In reviewing the decision of an administrative agency, this court defers to the agency's findings of fact. Teague v. Mo. Gaming Comm'n, 127 S.W.3d 679, 682 (Mo.App.W.D. 2003). This court may not substitute its judgment for that of the agency on factual matters. This court must, however, determine whether a finding of fact is supported by competent and substantial evidence in the record. RSMo § 536.140.2(3). "Substantial evidence" is evidence that if true has probative force upon the issues; it includes only competent evidence, not incompetent evidence. Knapp v. Missouri Local Gov't Employees Retirement Sys., 738 S.W.2d 903, 913 (Mo.App.W.D. 1987). "Competent evidence" is relevant and admissible evidence that "is capable of establishing the fact in issue." *Id.*

Where a question of law is presented in the course of the agency's action, a court reviews *de novo* the conclusion of law reached by the agency. Grace v. State Gaming Comm'n, 51 S.W.3d 891, 896 (Mo.App.W.D. 2001); *See Teague*, 127 S.W.3d at 682. Review of issues of law is a *de novo* review by the court. Questions of law are matters for the independent judgment of the court. State Bd. of Registration Healing Arts v. McDonagh, 123 S.W.3d 146 (Mo.banc

2003). This court is not bound by the agency's conclusions of law, or interpretation of the law. *See also* Bruemmer v. Missouri Dept. of Labor Rels. 997 S.W.2d 112, 115-116 (Mo.App.W.D. 1999). Finally, where the decision of the agency involves the interpretation of law and application of the law to undisputed facts, the court must form its own independent conclusions, and is not bound by the interpretation of the hearing examiner. Missouri Comm'n of Human Rights v. Red Dragon Restaurant, Inc., 991 S.W.2d 161, 165 (Mo.App.W.D. 1999).

The standard for "arbitrary and capricious" was described in Missouri Nat'l Educ. Ass'n. v. Missouri State Bd. of Educ., 34 S.W.3d 266 (Mo.App.W.D. 2000). "To meet basic standards of due process and to avoid being arbitrary, unreasonable, or capricious, an agency's decision must be made using some kind of objective data rather than mere surmise, guesswork, or 'gut feeling.' An agency must not act in a totally subjective manner without any guidelines or criteria." *Id.* at 281.

The Agency Decision:

Lisa Johnston's application for a foster care license was denied because she is a lesbian. The Director specifically found that "but for her sexual orientation, it was agreed by all parties that Applicant and her partner have exceptional qualifications to be foster parents." AR at 125.

In its Conclusions of Law the DSS and its Director rely upon RSMo § 566.090, which states:

1. A person commits the crime of sexual misconduct in the first degree if he has deviate sexual intercourse with another person of the same sex or he purposely subjects another person to sexual contact without that person's consent.
2. Sexual misconduct in the first degree is a class A misdemeanor unless the actor has previously been convicted of an offense under this chapter.... AR at 126.

In its Conclusions of Law, Respondents also rely upon RSMo § 210.506, which provides:

1. The division shall promulgate and publish rules in accordance with this section and chapter 536 R.S.Mo, for the licensing of foster homes, residential care facilities and child placing agencies....

2. The rules so promulgated shall be designed to promote the health, safety, and well-being of children served by the foster homes, residential care facilities and child placing agencies. No rule or portion of a rule promulgated under the authority of sections 210.481 and 210.565 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

The Respondents, in the agency's decision, also rely on 13 CSR 40-60.030, which states regarding the minimum qualifications for foster parents:

(2) Personal Qualifications Required of Foster Parent(s). Foster parent(s) shall be responsible, mature individuals of reputable character who exercise sound judgment, display the capacity to provide good care for children and display the motivation to foster.

The Director affirmed that the agency's denial of a foster care license to Petitioner, reaching this ultimate conclusion applying the law to the facts in this case:

The credible evidence established that Applicant is a lesbian engaged in a homosexual relationship. The Agency's policy requires it to consider first and foremost the best interests of the child to be fostered. It is the Agency's policy that it is not in the best interests of a foster child to be placed with gay or lesbian foster parents. While the Agency's policy does not require it to investigate into the sexual orientation of a foster home license applicant, it prohibits issuing licenses to gay and lesbian households if the Agency otherwise becomes aware of the applicant's sexual orientation through a self-declaration or other information. The Missouri Code of State Regulations, tit.13, §40-60.030, requires that a foster parent must have a reputable character. Section 566.090, RSMo Supp. provides that homosexual activity in the State of Missouri is unlawful. Applicant fails to meet the minimum qualifications to be a foster parent as set forth in the Missouri State Regulations. Therefore, the Agency's denial of a foster home license to Applicant was proper. AR at 126.

FINDINGS AND CONCLUSIONS OF LAW

I. The DSS decision is unsupported by competent and substantial evidence upon the whole record in its conclusion that the Petitioner fails to meet the minimum standard of having "a reputable character" as required by 13 CSR 40-60.030.

The evidence in this case is undisputed. Petitioner is engaged in a monogamous lesbian relationship with her roommate. But for her sexual orientation, all parties agreed that the Applicant and her partner have exceptional qualifications to be foster parents. Petitioner's house met licensing standards. AR at 3. Petitioner and her roommate Ms. Roginski passed initial background screening, and were referred into the foster care training program. AR at 23. Ms. Rothweiler, the caseworker who conducted the home study and background checks on Petitioner's application, testified that Petitioner's education and professional experience make her exceptionally qualified as a foster parent. AR at 23, 24. Petitioner holds a bachelor's degree in Human Development and Family Services, with a special emphasis on childhood development. Ms. Johnston currently works for KCMC Child Development Corporation, where she consults with nine Head Start programs, providing activities that are developmentally appropriate for children in their care. Prior to that Petitioner worked as a lead teacher in a day treatment program at The Children's Place, which provides services to neglected or abused children. Prior to that, Petitioner worked with a program that helps at-risk families. She has also worked with Head Start, a program that provides services to help underprivileged children prepare to receive an education in school. In addition, Petitioner volunteers as a Sunday School teacher in her church, and volunteers to provide day care for a Parents' Day Out Program on occasion. Her field of expertise is Early Childhood Development. She has focused on providing services to children and families that have experienced trauma.

Petitioner's DSS caseworker also testified at the administrative hearing that Petitioner's roommate possesses educational and professional experience which make her exceptionally qualified as a foster parent: she holds an undergraduate degree in psychology, and a master's degree in counseling; she finished a general theology divinity degree; she is employed at

Marillac as a chaplain and therapist; she provides counseling, family therapy and group therapy around spiritual issues, character development and sometimes moral development. AR at 61. The caseworker, who investigated the backgrounds of Petitioner and her roommate, also testified that Petitioner and her roommate were “willing and able to provide a safe and nurturing home environment for a child that may need placement,” and that both petitioner and her roommate are “highly qualified to serve as foster parents.” AR at 26. Ms. Rothweiler, also testified that it is not her job to inquire into sexual orientation because it is her job to find a home that will serve the best interest of the child or children in the system. She went on to acknowledge that “sexual orientation ultimately is irrelevant to that inquiry.” AR at 21-22.

The agency’s finding that Petitioner lacks the required “reputable character” is unsupported by competent and substantial evidence. In fact, there was no evidence in the administrative record, which would support the conclusion that Petitioner lacks “reputable character.”

The conclusion that Petitioner lacks the required “reputable character” is based solely on the Director’s apparent legal conclusion reached from application of Missouri’s sodomy statute, RSMo § 566.090, which makes it a misdemeanor for a person to have sexual intercourse with another person of the same sex. The agency decision concludes that “Section 566.090 R.S.Mo Supp. provides that homosexual activity in the State of Missouri is unlawful.” AR at 126.

The agency’s reliance on this statute is misplaced in light of the United States Supreme Court’s holding in *Lawrence v. Texas*, 539 U.S. 558 (2003). In *Lawrence*, the Supreme Court examined the Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct, and concluded that the statute violates the due process clause of the U.S. Constitution. Similar to the Missouri statute, the Texas statute provided “[a] person

commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.” Tex. Penal Code Ann. § 21.06 (2003).

In *Lawrence*, the Supreme Court held that consenting adults may choose to enter into relationships in the confines of their homes and their own private lives and still retain their dignity as free persons. “The liberty protected by the Constitution allows homosexual persons the right to make this choice.” 539 U.S. at 567. Noting that for centuries there have been “powerful voices to condemn homosexual conduct as immoral,” the Court observed that in the past half century there has been an “emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex.” *Id.* at 572. The Court in *Lawrence* concluded that in “matters involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment,” and “persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.” *Id.* at 574. Writing for the Court, Justice Kennedy concluded that the Due Process Clause “affords consenting adults the right to engage in private homosexual conduct without intervention of the government...,” and the statute “furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual.” *Id.* at 578.

To the extent that the DSS decision relies upon RSMo § 566.090, which purportedly criminalizes adult consensual private homosexual conduct, its reliance is misplaced. The U.S. Supreme Court has held that such a statute violates the Due Process Clause of the Constitution. The Court’s prior decision of *Bowers v. Hardwick*, 478 U.S. 186 (1986) was wholly repudiated, and was described as “not correct when it was decided and it is not correct today.” *Lawrence*, 539 U.S. at 578. Given these holdings, this court concludes that there is no enforceable Missouri

statute criminalizing private, consensual, adult, non-commercial same-sex sodomy. The Missouri sodomy statute is no longer enforceable law. Respondents may not rely solely upon Missouri's unenforceable statute as its sole basis for reaching the conclusion that Petitioner lacks moral or reputable character.

The Court also rejects the Respondents' argument that reliance on RSMo § 566.090 is appropriate here, because the agency's purpose is not criminal prosecution of Petitioner, but rather the purpose is to find the Petitioner morally unfit or lacking in "reputable character." The Supreme Court, in declaring the Texas statute unconstitutional, specifically noted that the criminal statute has implications far beyond defining the criminal offense. Justice Kennedy noted that the stigma of the criminal statute has collateral consequences beyond a criminal conviction. To allow the agency's proposed application of the Missouri same-sex consensual sodomy statute as a tool for defining "morality" or "reputable character" here would impermissibly deny Petitioner the protection of the Due Process Clause. There is no enforceable Missouri statute criminalizing private, consensual, adult, non-commercial same-sex sodomy. There was no evidence in the administrative record, which would establish a violation of this law. There is no permissible basis for DSS to conclude either that Petitioner has engaged in criminal conduct based on this statute, or that she lacks reputable character based on the statute. The Due Process Clause protects Petitioner from the Respondents' proposed application of RSMo § 566.090. No moral conclusions may be drawn from a constitutionally unenforceable statute.

There is no competent evidence in the administrative record which supports the conclusion that the Petitioner lacks reputable character. The administrative decision relies solely on the *existence* of Missouri's same-sex criminal statute, to reach its conclusion that Petitioner

lacks reputable character. The record as a whole is void of any evidence supporting DSS's conclusion that Petitioner lacks moral character or reputable character; rather, the record as a whole depicts a Petitioner whose adult life has been focused on providing services to children and families who have suffered trauma or neglect. Nothing in the administrative record provides factual or legal support for a conclusion that the Petitioner "lacks reputable character." To the contrary, the parties all agreed that but for "her sexual orientation," the applicant and her partner have exceptional qualifications to be foster parents. AR at 125. The fact that she is a lesbian does not support the conclusion that Petitioner lacks reputable character.

The court notes also that the DSS licensing regulation requiring "reputable character" does not define that term. It must be considered, therefore, with the plain meaning of "reputable character." The American Heritage College Dictionary defines "reputation" as "general estimation in which a person is held," and defines "character" as "moral or ethical strength." Given the ordinary meaning of these terms, there is no competent and substantial evidence upon the whole record that would support the Director's conclusion that Petitioner lacks "reputable character." Viewing the record as a whole, there is only evidence that would support the excellent character and professional reputation of the Petitioner. AR at 122.

In conclusion, the record lacks competent and substantial evidence to support the agency's decision that Petitioner lacks reputable character and is therefore unfit to be licensed as a foster parent. The agency decision fails to meet the statutory standard of RSMo § 536.140.2(2). This court concludes that the agency decision is unsupported by competent and substantial evidence upon the record as a whole.

II. The Agency’s denial of Ms. Johnston’s application based on the ground that state law does not allow permanency (or permanent placement) of children with homosexuals, is unsupported by competent and substantial evidence in the record, and is arbitrary and capricious.

Petitioner’s application for a foster care license was denied for a single reason: “because she was a lesbian.” AR at 124. However, in the administrative decision, the hearing officer described the agency’s evidence which included three purported reasons for the denial of the license, advanced by Ms. Austin, the NW Regional Coordinator of DSS. AR at 122. Ms. Austin testified at the administrative hearing, that placement with homosexual foster parents is not in the best interests of the child because (1) state law does not allow permanency (i.e. permanent placement or adoptive placement) of children with homosexuals;¹ (2) some birth parents object to having their children fostered by homosexuals; and (3) “children would face stigmatization at school and other adverse affects based on homophobia in the community.” AR at 33, 122. While this testimony was not presented as the ultimate reason for denial of the foster care license, these reasons should be addressed, for a full and fair review of the administrative decision reached in this case.

The issue of “permanency” was addressed by Respondents’ counsel in oral arguments before this court. Respondents’ counsel concedes that the “permanency” reason is not a legal basis for the agency’s action in this case. Further, adoption is a separate statutory process from that of foster case licensing.

To be clear, there is no Missouri law which precludes custody placement with a homosexual. There was no truth to Ms. Austin’s stated legal conclusion that that Missouri case law “as it stands, does not support legal custody of a child with a lesbian couple.” AR at 122.

¹ In her initial letter to Petitioner, notifying Petitioner of the denial of her application for a foster care license, Ms. Austin stated “Missouri case law, as it stands, does not support legal custody of a child with a lesbian couple.” AR at 122.

The Missouri Supreme Court has stated, “[a] homosexual parent is not ipso facto unfit for custody of his or her child, and no reported Missouri case has held otherwise.” J.A.D. v. F.J.D., 978 S.W.2d 336, 339 (Mo. 1998). Rather, the Court directed that it is appropriate to “consider the *impact* of homosexual or heterosexual *misconduct* upon the children in making a custody determination.” *Id.* at 339-340 [emphasis added], citing T.C.H. V. K.M.H., 693 S.W.2d 802, 804-05 (Mo. banc 1976). There is no legal authority in Missouri—case law or statute—which precludes child custody placement with a homosexual.

The court also notes that Petitioner, in her application for a foster care license, checked boxes for both “adopting” and “fostering” as her area “of primary interest.” AR at 74. There is no competent or substantial evidence to support a conclusion of “lack of permanency” regarding Petitioner’s application for a foster care license.

To the extent that Ms. Austin’s testimony on “permanency” is the rationale underlying DSS’s decision, it is unsupported by competent and substantial evidence in the record. Witness conclusions, where devoid of any factual support, do not rise to the level of substantial and competent evidence. Hutchings v. Roling, 151 S.W.3d 85, 89 (Mo.App.E.D. 2004). Here, Ms. Austin’s explanation regarding “permanency” of placements with homosexuals is neither supported by competent evidence nor legal authority. Her stated reason in this regard was incorrect, at best. The agency’s reliance on “permanency” as a reason for denial of the foster care license is thus arbitrary and capricious, and unsupported by competent evidence or relevant legal authority, under RSMo §§ 536.140.2(3) and (6).

III. The agency’s denial of Ms. Johnston’s application based on the ground that some birth parents object to having their children fostered by homosexuals is unsupported by competent and substantial evidence in the record, and is arbitrary and capricious.

The “parent objection” reason advanced by the agency is arbitrary and capricious, within the meaning of MAPA. “To meet basic standards of due process and to avoid being arbitrary, unreasonable, or capricious, an agency’s decision must be made using some kind of objective data rather than mere surmise, guesswork, or ‘gut feeling.’ An agency must not act in a totally subjective manner without any guidelines or criteria.” *Missouri Nat’l Educ. Ass’n.*, 34 S.W.3d at 281. There was no objective data in the administrative record to support the “parent objection” reason stated by Ms. Austin. Ms. Austin’s testimony on this topic is incompetent evidence, and falls short of the statutory standard of RSMo § 490.065, which requires that facts and data on which an expert relies must be those “reasonably relied on by experts in the relevant field.” *State Bd. of Registration Healing Arts*, 123 S.W.3d at 149.

Lacking objective data or factual development, the purported “parent objection” reason advanced by the agency is unsupported by competent and substantial evidence, and is arbitrary. This purported reason for the license denial fails under RSMo §§ 536.140.2(3) and (6).

V. The agency’s denial of Ms. Johnston’s application based on the ground that foster children might be stigmatized is unsupported by competent and substantial evidence in the record, and is arbitrary and capricious.

The “stigmatization” reason advanced by the agency is arbitrary and capricious, within the meaning of MAPA. It appears in the administrative record without any objective data.

There was no competent and substantial evidence in the administrative record, supporting the “stigmatization” reason or conclusion stated by Ms. Austin. No facts or objective data were offered by Ms. Austin. There was no evidence that her conclusion is based upon facts or data reasonably relied upon by experts in the field. The statutory evidentiary standard of RSMo § 490.065.3 was not met. That statute requires that the facts and data on which an expert relies must be those reasonably relied on by experts in the relevant field. That statutory standard is

also the standard applied in administrative cases. *State Bd. of Registration Healing Arts*, 123 S.W.3d at 149. In this case, no reasonably reliable data was offered. No competent evidentiary support was given for the “stigmatization” reason which Ms. Austin attempted to articulate. Further, any attempt by Respondents to supplement the administrative record with articles or publications on this subject is inappropriate, and outside of this court’s scope of review. *Missouri Comm’n of Human Rights*, 991 S.W.2d at 165.

The agency’s rationale based on “stigmatization” or societal disapproval is also impermissible in light of the Supreme Court’s decision in *Palmore v. Sidoti*, 466 U.S. 429 (1984) and its progeny. In *Palmore*, the Court struck down a custody order that was based on the fact that the Caucasian mother was cohabiting with an African American man. The Florida court concluded that a change of custody was proper, noting that “it is inevitable that Melanie will, if allowed to remain in her present situation and attains school age and thus more vulnerable to peer pressures, suffer from the social stigmatization that is sure to come.” The Supreme Court, in that custody case, concluded:

The question, however, is whether the reality of private biases and the possible injury they might inflict are permissible considerations for removal of an infant child from the custody of its natural mother. We have little difficulty concluding that they are not. The Constitution cannot control such prejudices but neither can it tolerate them. *Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.* Public officials sworn to uphold the constitution may not avoid a constitutional duty by bowing to the hypothetical effects of private racial prejudice that they assume to be both widely and deeply held. (Emphasis added.)

Rather than focusing on the party’s qualifications to have custody of the child, devotion to the child, adequacy of housing facilities, quality of care provided by the parent, the trial court in *Palmore* erroneously rested its decision upon its own assumption and prediction of social stigmatization and private biases.

Lacking in competent and substantial evidence and lacking in objective data or factual development, the purported “stigmatization” reason advanced by the agency is arbitrary, and fails under both RSMo § 536.140.2(3) and (6).

JUDGMENT

In conclusion, for the reasons stated above, this court finds that the Respondents’ decision denying the Foster Care License to Petitioner is unsupported by competent and substantial evidence upon the whole record, under RSMo § 536.140.2(3). This court also finds that the agency’s decision in denying the Foster Care License to Petitioner is arbitrary and unreasonable, under RSMo § 536.140.2(6). Ms. Johnston’s sexual orientation should not be the endpoint of the Agency’s consideration of her application for a foster care license. Her sexual orientation does not make her *ipso facto* unqualified to be licensed as a foster parent.

IT IS NOW THEREFORE ORDERED AND ADJUDGED that the Summary Judgment is entered in favor of Petitioner and against Respondents.

IT IS FURTHER ORDERED that Respondents’ Administrative Decision and Order denying a foster care license to Petitioner is now **REVERSED**.

IT IS FURTHER ORDERED that Respondents are hereby ordered to permit Petitioner and Ms. Roginski to complete the training program for prospective foster care parents and, upon her satisfactory completion of the training program and any remaining requirements, to approve Ms. Johnston’s application for a Missouri foster parent license.

IT IS SO ORDERED.

Date: _____

Sandra C. Midkiff, Circuit Judge

I certify that a copy of the above and foregoing
was mailed/faxed on this _____, 2006, to:

Ms. Lisa A. Brunner
1200 Main Street, Suite 1700
Kansas City, MO 64105
Fax: 816-421-0596

Mr. Kenneth Y. Choe
125 Broad Street, 18th Floor
New York, NY 10004
Fax: 212-549-2650

Mr. Jeremiah W. Jay Nixon
Robert L. Ortals, Jr.
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102
Fax: 573-751-8796

Odette B. Cole, Judicial Administrative Assistant